

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular to the financial services industry on changes to the Standard Licence Conditions applicable to Category 4b Investment Services Licence Holders

In the light of representations received by the Authority from the financial services industry, the MFSA has today published a revised version of SLCs 4.29 and 4.30 of Part BIV of the Investment Services Rules for Investment Services Providers applicable to Category 4b Investment Services Licence Holders.

Indicated in the tables hereunder is a comparison of the existing SLCs 4.29 and 4.30 and a version of the SLCs as revised together with a note explaining the rationale underpinning such revisions. The revised SLCs will come into force on Monday 6th October 2014.

SLC 4.29	
Current Text	Proposed Revised Text
<p>A Licence Holder acting as custodian of an AIF which has no redemption rights exercisable during the period of 5 years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in accordance with Article 21(8)(a) of the AIFM Directive and which generally invest in issuers or non-listed companies in order to acquire control of such companies in accordance with Article 26 of the AIFM Directive shall be obliged to comply with the following SLCs prescribed in this Part of the Rules:</p> <p>i. SLC 1.01 to SLC 1.24 providing general requirements applicable to custodians of collective investment schemes, the general organizational requirements applicable, compliance, risk management and enforcement;</p> <p>ii. SLC 2.01 to SLC 2.29 dealing with the financial resources requirements, accounting and record keeping requirements;</p> <p>iii. SLC 4.01 to SLC 4.28 dealing with the supplementary conditions applicable to a custodian of an AIF.</p>	<p>A Licence Holder acting as custodian of an AIF which has no redemption rights exercisable during the period of 5 years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in accordance with Article 21(8)(a) of the AIFM Directive and which generally invest in issuers or non-listed companies in order to acquire control of such companies in accordance with Article 26 of the AIFM Directive shall be obliged to comply with the following SLCs prescribed in this Part of the Rules:</p> <p>i. SLC 1.01 to SLC 1.24 providing general requirements applicable to custodians of collective investment schemes, the general organizational requirements applicable, compliance, risk management and enforcement;</p> <p>ii. SLC 2.01 to SLC 2.29 dealing with the financial resources requirements, accounting and record keeping requirements;</p> <p>iii. SLC 4.01 to SLC 4.18, SLC 4.21 to SLC 4.23 and SLC 4.28 dealing with the supplementary conditions applicable to a custodian of an AIF:</p>

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	<p>Provided that SLCs 4.19 to 4.27 shall apply to a Category 4b Licence Holder solely in so far as such Licence Holder holds in custody financial instruments as prescribed in Article 21(8) AIFMD and in relation to such instruments only.</p>
<p>Explanatory Note</p> <p>Paragraph (iii) of SLC 4.29 has been revised to include the applicability of the SLCs dealing with the requirement to have a written contract evidencing the appointment of the depositary, the requirements relating to the depositary functions as well as conflicts of interest and delegation.</p> <p>Given the wording used in Article 21(3) [third paragraph] [“generally do not invest in assets that must be held in accordance with Article 21(8)(a)”] the need was felt to ensure that in the case where the fund does invest in financial instruments, then the custodian must be bound by strict liability solely in so far as custody of financial instruments is concerned.</p>	

SLC 4.30	
Current Text	Proposed Revised Text
<p>A Licence Holder acting as custodian of a third country AIF which is marketed in the EU/EEA in terms of Article 36 of the AIFM Directive, shall be obliged to comply with the following SLCs prescribed in this Part of the Rules:</p> <p>i. SLC 1.01 to SLC 1.24 providing general requirements applicable to custodians of collective investment schemes, the general organizational requirements applicable, compliance, risk management and enforcement;</p> <p>ii. SLC 2.01 to SLC 2.29 dealing with the financial resources requirements, accounting and record keeping requirements;</p> <p>iii. SLC 4.01 to SLC 4.03, SLC 4.04(a), SLC 4.06 to 4.11 and SLC 4.28 dealing with the supplementary conditions applicable to a custodian of an AIF.</p>	<p>A Licence Holder acting as custodian of a third country AIF which is marketed in the EU/EEA in terms of Article 36 of the AIFM Directive, shall be obliged to comply with the following SLCs prescribed in this Part of the Rules:</p> <p>i. SLC 1.01 to SLC 1.24 providing general requirements applicable to custodians of collective investment schemes, the general organizational requirements applicable, compliance, risk management and enforcement;</p> <p>ii. SLC 2.01 to SLC 2.29 dealing with the financial resources requirements, accounting and record keeping requirements;</p> <p>iii. SLC 4.01 to SLC 4.04(a), SLC 4.06 to 4.11, SLC 4.28 and 4.31 dealing with the supplementary conditions applicable to a custodian of an AIF.</p>

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Explanatory Note

Paragraph (iii) of SLC 4.30 has been revised to include the applicability of the SLCs dealing with the requirement to have a written contract evidencing the appointment of the depositary and the requirements relating to the depositary functions.

Article 36(1)(a) provides that the AIFM shall comply with all the requirements established in the AIFMD with the exception of Article 21. However the AIFM shall ensure that one or more entities are appointed to carry out the duties referred to in Article 21(7), (8) and (9).

For this reason, a decision was taken apply strictly the SLCs transposing Article 21(7), (8) and (9). No strict liability clauses will apply in this case.

Any queries should be addressed to Dr. Isabelle Agius, Regulatory Development Unit by e-mail on iagius@mfsa.com.mt or to Mr. Jonathan Sammut, Securities and Markets Supervision Unit on jsammut@mfsa.com.mt;

Communications Unit
Malta Financial Services Authority
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